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Attorneys for Defendants

GMAC MORTGAGE USA CORPORATION, HOMECOMINGS FINANCIAL, LLC and
EXECUTIVE TRUSTEE SERVICES, LLC

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARLOS H. PEREZ, individually and on behalf)
of the general public,)

Plaintiff,)

v.)

GMAC MORTGAGE USA CORPORATION,)
a/k/a GMAC MORTGAGE, LLC, a Delaware)
corporation; MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC., a Delaware)
corporation; EXECUTIVE TRUSTEE)
SERVICES, LLC, a Delaware limited liability)
company; GREENPOINT MORTGAGE)
FUNDING, INC., a New York corporation;)
ANDRUS & ASSOCIATES, INC., a California)
corporation; PAUL RAY ANDRUS, individually)
and in his official capacity; HOMECOMINGS)
FINANCIAL, LLC, a Delaware limited liability)
company; COUNTRYWIDE HOME LOANS,)

CASE NO. C08-01972-JW

**DEFENDANTS GMAC MORTGAGE USA
CORPORATION, HOMECOMINGS
FINANCIAL, LLC AND EXECUTIVE
TRUSTEE SERVICES, LLC'S REVISED
NOTICE RE: PARTIAL MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT**

Hon. James Ware

Date: July 28, 2008

Time: 9:00 a.m.

Place: Courtroom 8

INC., a New York corporation; SOUTH
 PACIFIC FINANCIAL CORPORATION,
 a California corporation; RESIDENTIAL
 MORTGAGE CAPITAL, D/B/A FIRST
 SECURITY LOAN; a California corporation;
 JAMES JOHN CHAPMAN, individually and in
 his official capacity; LUIS G. BARRIOS,
 individually and in his official capacity;
 ELIZABETH P. CAMPOS, individually and in
 her official capacity; and DOES 1 through 20,
 inclusive,

Defendants.

REVISED NOTICE OF PARTIAL MOTION TO DISMISS

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 28, 2008¹, at 9:00 a.m., or as soon thereafter as the matter may be heard in the above-entitled Court, Defendants GMAC Mortgage USA Corporation ("GMACM"), Homecomings Financial, LLC ("Homecomings") and Executive Trustee Services, LLC ("Executive" and sometimes collectively referred to with GMACM and Homecomings as the "Moving Parties") will bring for hearing before the Honorable James Ware, United States District Judge, in Courtroom 8 of the United States Courthouse located at 280 South First Street, San Jose, California, a Partial Motion to Dismiss the First Amended Complaint filed by Carlos H. Perez. This Motion is brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and is based on this Notice of Motion and Motion, the incorporated Memorandum of Points and Authorities, the additional documents filed concurrently herewith, the pleadings, papers and records on file in this action, and such oral argument as may be presented at the time of the hearing.

With this Motion, the Moving Parties seek an order from the Court granting the following relief:

¹ Defendants provide this Revised Notice because their prior notice erroneously referenced a July 21, 2008 hearing date. Defendants have agreed with Plaintiff that the hearing should proceed on July 28, 2008.

1 1. Dismissing Count One alleging violations of the Truth in Lending Act, 15 U.S.C. §§
2 1601, *et seq.* (“TILA”), because Plaintiff’s claims for civil damages and rescission are time-barred
3 and/or barred by applicable Ninth Circuit authority;

4 2. Dismissing Count Two alleging violations of TILA as to all but Plaintiff’s claim for
5 rescission pursuant to section 1635 of TILA because any other form of relief is time-barred;

6 3. Dismissing Counts Three and Four alleging violations of the Real Estate and
7 Settlement Procedures Act, 12 U.S.C. §§ 2601, *et seq.* (“RESPA”), because the claims are time-
8 barred and because Plaintiff does not allege facts sufficient to sustain a claim against the Moving
9 Parties; and

10 4. Dismissing Counts Six, Eleven and Twelve alleging “civil conspiracy” and violations
11 of Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”) and Cal. Welf. & Inst. Code §§ 15601, *et*
12 *seq.* (the “Elder Abuse Act”), respectively, because the claims asserted are not recognized causes of
13 action and/or Plaintiff does not allege facts sufficient to sustain the claims against the Moving
14 Parties.²

15 Dated: June 13, 2008

LOCKE LORD BISSELL & LIDDELL LLP

17 By: /s/ J. Matthew Goodin

18 Attorneys for Defendants
19 GMAC MORTGAGE USA
20 CORPORATION, HOMECOMINGS
21 FINANCIAL, LLC and EXECUTIVE
22 TRUSTEE SERVICES, LLC
23

24
25 ² Although this Motion does not seek dismissal of the Complaint in its entirety—Plaintiff’s claim for
26 rescission of the Greenpoint Loans (part of Count Two) will remain if the Court grants the Motion—
27 the filing of this Motion tolls the deadline for the Moving Parties to answer. *See, e.g., Batdorf v.*
28 *TransUnion*, No. C 00-0501 CRB, 2000 WL 635455, *5 (N.D. Cal. May 8, 2000). To the extent a
response to the claims and allegations of the Complaint that are not addressed by this Motion is
required now, the Moving Parties deny all such claims and allegations and reserve all applicable
defenses.